1941.

File No. O. Partnership/41

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Legal DEPARTMENT

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Subject:—

Opinions under the Indian Partnership Act, 1932.

p.19

C O N T E N T S.

Legal Department File No. O. Partnership / 41.

S.No.	Compilation No.	Subject.	Pages
		Indian Partnership Act, 1932.	
1.	R.I.No.10171 dt. 28-11-40 R.I.No.1948/26-2-41 O. No. 4289/10-5-41	Whether the balance of Rs.393 due to Mr. Usman Hasan from Govt. under contracts Nos. 55 and 56 of 1939-40 can be appropriated towards the satisfaction of Govt. dues due from Messrs Shankar Jagannath Kabre and Usman Hasan under contract No. 57 of 1939-40.	1-2
2.	R.I.No.8095 dt. 20-8-41 O.No. 9136/22-10-41	(i) Whether, where a firm has two places of business, registration of the firm in one area would be sufficient to enable the firm to file a suit in another area. (ii) Whether a firm can ~~and~~ be registered under two different - names (iii) Whether a firm can be registered in a name like "Bom. Trading Co., Proprietors Shah & Co." (iv) whether under rule 14 of the Bom. Partnership Rules, 1932 the Post Office is the agent of the Registrar for carrying the documents (v) Whether the correct address of the firm should be stated in the statement under sec. 58. (vi) Whether "permanent address of the partners" under sec-58(c) means the residential address of the partners. (vii) What is meant the expression " the duration of the firm" in cl. (f) of sec.58(1) (viii) Whether a notice of the extension of the duration of a firm can be validly given to the Register. (ix) Whether the Register is bound to accept an application containing references to minors as "admitted to benefits of partnership". (xii) What is the minimum evidence necessary to show that a person sending an intimation is limation under sec-62 is the agent of the firm. ~~(xiii) Whether, where one of the two partners dies,~~	

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(xiii) Whether a notice given in 1941 would be valid under sec-63(1).

(xiv) Whether , where one of the two partnes dies, the surviving partner can take a new partner by notifying the change under sec. 63(1).

(xv) Whether signing in the presence of a witness is a sufficient verification under sec-58(2)

(xvi) Whether a second verification is necessary.

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OFFICE OF THE R.L.A.

The only point that seems to have been raised for consideration of the Remembrancer of Legal Affairs, is whether the balance of Rs.393 due to Mr. Usman Hasan from Government under contracts No. 55 and 56 of 1939-40 can be appropriated towards the satisfaction of Government dues due from Messrs. Shankar Jagannath Kabre and Usman Hasan under contract No. 57 of ~~1939~~ 1937-40.

2. The contract No. 57 of 1939-40 has been executed by Messrs. Shankar Jagannath Kabre and Usman Hasan, and there is ~~xxx~~ nothing to show that it was done by them as partners of any firm. Sub-clause (c) of clause 3 of this contract inter alia prpvides that the excess expenses ~~xxx~~ shall be borne and paid by the original contractor and shall be deducted from any mondy due to him by Government under the contract or otherwise or from his security deposit or proceeds of sale thereof, or a sufficient part thereof. The words "or otherwise," are very wide and would include amoun ts due under other contracts also. Under the contract No. 57 of 1939-40 Messrs. Shankar Jagannath Kabre and Usman Hasan are both jointly and severally liable and it would be open to Government to recover from Mr. Usman Hasan alone all the dues under this contract. Consequently it would be competent for Government to appropriate the dues payable to Mr. Usman Hasan under the contract Nos. 55 and 56 of 1939-40; ~~xxxxxxxxxxxxxx~~ towards the s----- action of Government dues under the contract No. 57 of 1939-40; but Government will have to file a suit to recover the balance, if any, after such appropriation.

3. Even assuming that Messrs. Shankar Jagannath Kabre and Usman Hasan executed the contract No. 57 of 1939-40 as partners ino one firm the right of Government to appropriate as stated above would remain unaffected . Under section 25 of the Indian Partnership Act, 1932 every partner is liable, jointly with all other partners and also severally, for all acts of the firm done while he is a partner. The creditor of a firm ~~xx~~ may therefore sue any one of the partners or all of them and failure to implead all of them is no defence to a suit against some only (Appa Dada V. Ramkrishna 53 Bom. 652); and any internal arrangement

between partners as to liquidation of certain liability will not be binding on the creditors (Surma V. Pandharinath, 35 C.W.N. 593; Veerappa v. Arunachalan Chetty 47 M.L.J. 168; Iyer's Law of contract, p. 1168). Messrs. Shankar Jagannath Kabre and Usman Hasan would therefore be jointly and severally liable to pay to Gove nment the balance due from them under the contract No. 57 of 1939-40. If that is so, there can be no legal objection to Government appropriating the sum of Rs. 393 due from Government to Mr. Usman Hasan under the contracts Nos. 55 and 56 of 1939-40 towards the satisfaction of the balance due to Government from Messrs. Usman Hasan and Shankar Jagannath Kabre under the contract No. 57 of 1939-40. The view expressed by Secretary, P.W.D. at p. 10 ante that the Executive Engineer is not wrong in withholding payment of Rs.393 due to Mr. Usman Hasan is not therefore correct.

O.C. Sd/- P.N.M.

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Remembrancer of Legal Affairs.

U.R. to the P.W.D., No. 4289. dated the 10th May 1941.

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Office of the R.L.A.

The first question raised for consideration of the R.L.A. is whether, where a firm has two places of business, for instance one in Bombay and the other in Calcutta, registration of the firm in Calcutta would be sufficient to enable the firm to file a suit in Bombay. The Indian Partnership Act, 1932 extends to the whole of British India (See section 1(2) of the Act). Under section 58(1) the registration of a firm can be effected at any time by applying to the Registrar of the area in which any place of the business of the firm is situated or proposed to be situated and under section 69(2) a registered firm can file a suit in any court. If these provisions are read together it is clear that a firm having two places of business can be validly registered in any of them and such registration would enable it to file a suit in any court. The answer to the question raised is, therefore, in the affirmative.

2. The second question raised for consideration is whether a firm can be registered under two different names and if so whether separate applications in Form A of the Bombay Partnership Rules, 1932 , in respect of each will be necessary. There is no objection under the Act to the same persons being registered as firms under two different names. Section 58(1) of the Act and Form A of the Rules, however, refer to "firm name" that is one name only. Consequently in such cases, such persons will have to make two

xxxxxx separate applications in Form A for registration.

3. The third question raised for consideration is whether a firm can be registered in a name like "Bombay Trading Co., Proprietors Shah and Co." Under the existing law there are no prescribed forms for the style of a firm and the liberty of partners to assume any firm-name they please is bounded only by general rules as to good will and trade names. Individuals may carry on business under any name and style they may choose to adopt provided they do not adopt a name tending to mislead the public into confusing them with others already trading under the same or like names (See Mulla's Partnership Act p. 17). Apart from the question whether or not a firm is a person, which question is immaterial for the purpose, it is open to a firm to get itself registered in a name like "Bombay Trading Co., Proprietors Shah & Co.".

4. The fourth question xix raised for consideration is whether under rule 14 of the Bombay Partnership Rules, 1933, the Post office is the agent of the Registrar for carrying the documents. Under rule 14 the documents may either on payment of the prescribed fee be lodged with the Registrar in person or sent to him by post along with the prescribed fee. This rule apparently prescribes the mode of lodging the documents with the Registrar. The post office does not become the agent of the Registrar. The sending of documents by post would raise

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a presumption that the documents in question were received by the Registrar at the time at which the letter containing the documents would be delivered to him in the ordinary course of business (see section 27 of the General Clauses Act, 1894, and the illustration (f) to section 114 of the Indian Evidence Act) But it is a prebuttable presumption and if the documents have been lost in transit the legal effect would be as if such documents were not received by the Registrar .

5. The fifth question raised for consideration is whether the correct address of the firm should be stated in the statement under section 58 or whether it would be sufficient to state the name of the town where the firm is carrying on its business. section 58(1)(b) requires only the 'place' or 'principal place' of business to be stated. It does not require the address of the firm to be stated. Clause (e) of section 58(1) provides for the addresses of the partners to be stated. If the intention of the legislature had been that the address of the firm should be stated, clause (b) of the section would have been worded differently requiring the address instead of the place to be stated. The town where a firm is carrying on business is a place and it would not be competent to the Registrar to refuse registration on the ground that the correct address is not stated when the town in which the firm is carrying on business is stated. It does not appear that an inference can be drawn that the expression 'place ' in section 58(1)(b) means 'address' because

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section 60(1) refers to 'location' of the place of business.

6. The sixth question raised for consideration is whether 'permanent address of the partners' under section 58(e) means the residential address of the partners and whether the partners can give the address as 'C/O. the firm' even though they may not be residing at the firm's premises. 'Permanent address' would ordinarily mean the residential address and unless a partner resides at the premises of the firm, he cannot give his address as 'C/O. the firm'.

7. The seventh question raised for consideration is what is meant by the expression "the duration of the firm" clause (f) of section 58(1). the expression "the duration of the firm" in in clause (f) of section 58(1) when read with section 7 and section 4 2(a) would obviously mean the period for which the firm is constituted. If the partners have stated in in the application under section 58 the period for which the firm is consituted i.e. the duration of the firm, the statement would be quite in conformity with section 58(f) and the Registrar cannot ask for further information or require them to state as to what would be done after the expiry of the duration of the firm (see section 59).

8. The eighth question raised for consideration is whether a notice of the extension of the duration of a firm can be validly given to the Registrar under Chapter VII of the Partnership Act. Section 63(1) is the only relevant provision.

But that provision provides for giving a notice of change in the constitution of a registered firm by <u>any incoming continuing or outgoing</u> partner. The words underlined clearly indicate that the change contemplated is one arising by a new partner being t aken or an old partner ceasing to be a partner of the firm. Consequently a notice of extension of the duration of a firm does not fall under section 63(1) . (See also the observation of the Special Committee in this respect at p. 1226 of Iyer's Law of Contracts). There is no provision in Chapter VII of the Act under which such a notice can be given. The Registrar should inform the partners giving such a notice that it could not be received by him under any of the provisions of the Act and leave it to them to decide what course they should follow.

9. The ninth question raised for consideration is whether a notice of change and a notice of dissolution under section 63(1) can be given in one and the same notice. A notice of change in the constitution contemplates continuance of the firm, while a notice of dissolution contemplates the opposite of it . It is not therefore possible to conceive how a notice of change nd a notice of dissolution can be given at one and the same time. If there is an interval between the change in the constitution and the dissolution and a notice in respect of both is proposed to be given by the partners, there is no legal objection to doing so, since

no time limit is prescribed for such a notice.

10. The tenth question raised for consideration is whether the Registrar is bound to accept an application containing reference s to minors as "admitted to benefits of partnership". It is true that a minor who is admitted to the benefits of partnership is not a partner; In the application under section 58(1) the date when each partner joined the firm and the names and addresses of the partners have to be mentioned and there isno provision for mentioning the names of minors admitted to benefits of partnership. But a reference in any such application to such minors would be only a superfluity. If an application otherwise complies with the provisions of sec 58 it need not be rejected on the ground that it contains such a reference.

11. The eleventh question raised for consideration is whether a statement under section 58(1) can be signed by an agent of a partner holding a general power of attorney. The words "specially authorised in this behalf" in section 58(1) clearly indicate that an agent holding a general power of attorney without being specially authorised for the purpose would not be entitled to sign the statement on behalf of his principal partner.

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12. The twelfth question raised for consideration is what is the minimum evidence necessary to show that a person sending an intimation under section 61 or section 62 is the agent of the firm. Agency may be created expressly by a written document or by operation of law or by a subsequent ratification or it may be inferred from the circumstances and conduct of parties. A bare allegation of agency is insufficient, but the specific scope of the agent's powers must be proved. Whether the legal relationship disclosed in a particular case amounts to an agency or not is a mixed question of law and fact. That the parties have chosen to style the relationship as an agency is not conclusive, if the incidents thereof as disclosed by the evidence do not justify a finding of agency (See Iyer's Law of Contracts pp. 917).. Consequently it is for the Registrar to inquire and decide in each case whether the person signing the notice under section 61 or section 62 is the agent of the firm. It is not possible to lay down a general rule regarding the minimum evidence that would be required in all such cases .

13. The thirteenth question raised for consideration is whether a notice given in 1941 that a certain partner retired as from 31st December 1934 would be valid under section 63(1). Section 63(1) states that when a change occurs a notice may be given in to the Registrar specifying the date thereof.

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Although there is nothing in the section to show within what time of occurrence of change the notice should be given, it appears that it is the intention of the Legislature that such notice should be given immediately the change occurs. (See the Special Committee Report at p. 1226 of Iyer's Law of Contracts). However since the Registrar is a mere recording officer he cannot in the absence of any time limit prescribed under section 63(1) refuse to file the notice even though it is given after a considerable lapse of time.

14. The fourteenth question raised for consideration is whether, where one of the two partners constituting firm dies, the surviving partner can take a new partner by notifying the change under section 63(1) or whether a fresh registration would be necessary. By the death of one of the two partners the firm would stand dissolved under section 42(c) and if the surviving partner carries on business, he does so on his own account and for his sole benefit. (See Iyer's Law of Contracts p. 1195). Consequently if the surviving partner takes in a new partner, it would amount to constituting a new firm necessitating a fresh registration under the Act. No notice of change can therefore be validly given under section 63(1).

15. The fifteenth question raised for consideration is whether signing in the presence of a witness is a sufficient verification under section 58(2). Section

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Section 58(2) states that each person signing the statement shall also verify it in the manner prescribed. This means that the statement should be signed and verified by each partner or his agent specially authorised. The manner of verification does not seem to have been prescribed by the rules framed under the Act. (See section 2(c) of the Act). Consequently until the manner of verfication is prescribed by rules the mere signing of the statement before a witness as provided in the Form From A in the Schedule to the rules would be sufficie sufficient.

16 The last question referred to R.L.A.for consideration is whether a second verfication that the facts stated in the application are correct, on the date of its presentation to the Registrar would is nedessary. No such second verification is necessary. The Registrar would not be justified in holding an enquiry whether or not the facts stated in the application are correct on the date of its presentation. Facts as verified by partners in the application should be taken to be true and on that assumption he should proceed further. (See section 69).

17. The questions raised being purely hypothetical should not have been referred to the R.L.A.

O.C. Sd/- P.N.M.
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Remembrancer of Legal Affairs.

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U.R. to H.D.No. 9136, dated the 22nd October 1941.

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